

# DECISION



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:**

B-220920

**DATE:** December 26, 1985

**MATTER OF:**

Sylvan Service Corporation

## DIGEST:

1. Protester has not shown that its proprietary rights have been violated where alleged proprietary information disclosed by contracting agency to all prospective bidders was not disclosed by protester's representative in confidence to contracting agency.
2. Alleged lack of background of protester's representative to make knowledgeable decision about release of information is protester's responsibility and not contracting agency's.
3. Given position of protester's representative as current contract's project manager and project manager's detailed knowledge and apparent control of all of contractor's employees, contracting agency reasonably believed that project manager was authorized to release information to prospective bidders about the number of contract employees.

Sylvan Service Corporation (Sylvan) protests the proposed award of an Air Force contract for custodial services at Edwards Air Force Base and the Rocket Propulsion Laboratory under Invitation for Bids (IFB) No. F04700-85-B-0090.

Sylvan alleges that the Air Force improperly disclosed the current number of employees Sylvan employs under its present contract for custodial services at Edwards Air Force Base. We deny the protest.

The Air Force explains that at the prebid conference for the IFB a prospective bidder questioned the Air Force about the number of employees currently working on Sylvan's existing contract. An Air Force representative then transmitted the question to Sylvan's project manager for the current contract and informed the project manager that the

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answer to the question would be given to all prospective bidders. The project manager furnished the information, and the Air Force amended the IFB to inform all bidders that Sylvan currently had "19 full-time, 45 part-time, and 11 on-call" employees.

A protester must prove by clear and convincing evidence that proprietary rights have been violated. Andrulis Research Corp., B-190571, Apr. 26, 1978, 78-1 C.P.D. ¶ 321. To meet this burden, the protester must demonstrate that: (1) the material was marked proprietary or confidential or it was disclosed in confidence; and (2) the data involved significant time and expense in preparation and contained material or concepts that could not be independently obtained from publicly available literature or common knowledge. John Baker Janitorial Services, Inc., B-201287, Apr. 1, 1981, 81-1 C.P.D. ¶ 249.

The Air Force argues that the numerical information, above, orally transmitted to the Air Force was not disclosed in confidence as Sylvan's project manager volunteered the information after the project manager knew the data would be publicly disclosed. In reply, Sylvan does not deny that its project manager disclosed the information as the Air Force reports but Sylvan argues that its project manager lacked the background to understand that release of this information would, allegedly, be damaging to Sylvan's competitive position. Further, Sylvan argues that, in any event, the Air Force should, instead, have contacted Sylvan's home office for permission to release the information.

Sylvan's argument that its agent lacked the background to make a knowledgeable decision about the data's release lacks merit. This lack of background, if true, was Sylvan's responsibility, not the Air Force's. Sylvan's alternative position--that the Air Force should have contacted Sylvan's home office for permission to release the data--is apparently founded on the alleged lack of authority of Sylvan's project manager to release the data. But it is well-established that a principal is bound by an agent's acts when the principal causes a third party to believe that the principal consents to have the act in question done by the agent. Restatement (Second) of Agency §§ 8, 27(1957); Dictaphone Corp., B-210692, June 27, 1983, 83-2 C.P.D. ¶ 26. Given the general authority of Sylvan's project manager and the project manager's detailed knowledge and apparent control of all activities of Sylvan's employees on this contract, the Air Force had reasonable grounds for

its belief that the project manager was authorized to release the information in question. Therefore, the Air Force's failure to ask Sylvan's home office for permission to release the information in question was not unreasonable under the circumstances.

Since the information disclosed in the circumstances was not disclosed in confidence, the protester has not shown that proprietary rights have been violated.

Protest denied.

*for Seymour Efron*  
Harry R. Van Cleve  
General Counsel